

LETTER OPINION
94-L-110

April 15, 1994

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking whether school districts providing services to children who are gifted must do so in accordance with state standards and guidelines or whether state standards and guidelines are attached only to the receipt of state financial aid to the school district's program for children who are gifted.

School boards of North Dakota school districts have broad powers concerning the instruction of pupils in their district. Some courses are prescribed by the Superintendent of Public Instruction or by law, such as the minimum curriculum for public and private high schools to receive approval from the Department of Public Instruction, N.D.C.C. ? 15-41-24 and accreditation standards which have been adopted pursuant to N.D.C.C. ? 15-21-04.1. School boards have the authority, however, to determine and establish additional courses of study as well as the authority to adopt rules for the reception, organization, grading, government and instruction of pupils. N.D.C.C. ? 15-29-08(4) and (13).

N.D.C.C. ch. 15-59 contains provisions on educational guidelines as well as financial obligations and assistance for special education for those children who have disabilities or who are gifted. N.D.C.C. ? 15-59-01(1) defines "child who is gifted" as being a gifted and talented child who requires differentiated educational programs beyond those normally provided by the regular school program. The definition of "special education" in N.D.C.C. ? 15-59-01(4) relates only to "children with disabilities." The 1993

Dr. Wayne G. Sanstead
April 15, 1994
Page 2

Legislative Assembly amended the definition of "special education" in section 15-59-01 to eliminate any reference to gifted children. N.D.C.C. ch. 15-59 requires school districts to provide special education to children with disabilities, but, with respect to children who are gifted, the chapter provides:

. . . School districts may provide special education to children who are gifted in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education.

N.D.C.C. ? 15-59-04.

The Superintendent of Public Instruction, as well as the director of special education, has various powers under N.D.C.C. ch. 15-59, including general state policy development, the prescription of rules and regulations for the special education of children with disabilities, the provision of assistance to school districts in the inauguration, administration, and development of special education programs, and the establishment of standards for approval of certification of schools, teachers, facilities, and equipment. N.D.C.C. ? 15-59-05. Although children who are gifted are not mentioned in N.D.C.C. ? 15-59-05, N.D.C.C. ? 15-59-04 does authorize school districts to provide "special education" to gifted students.

If the director of special education determines a school district has made expenditures for a child who is gifted equal to the average expenditures made in that district for elementary or high school students, as the case may be, the director "may provide reimbursement" to the school district from funds provided by the Legislative Assembly for that purpose.

N.D.C.C. ? 15-59-06.

Courts have consistently held that all statutes on the same subject (in pari materia) are to be considered together and given meaningful effect without rendering

Dr. Wayne G. Sanstead
April 15, 1994
Page 3

one or the other useless. Litten v. City of Fargo, 294 N.W.2d 628, 633 (N.D. 1980). Consequently, even though "children who are gifted" are not expressly included in the definition of "special education" in N.D.C.C. ? 15-59-01(4), the provisions in N.D.C.C. ?? 15-59-04, 15-59-05, and 15-59-06 indicate that the school district's provision of special programs for children who are gifted can be included in "special education" programs for which the Superintendent of Public Instruction and the director of special education may issue standards and which may be eligible for financial assistance under N.D.C.C. ? 15-59-06. School districts, therefore, have the discretion to provide special education to children who are gifted under N.D.C.C. ? 15-59-04 and if the district does so, it is required to cooperate with the director of special education in its provision. N.D.C.C. ? 15-59-04. The director of special education adopts standards for special education under N.D.C.C. ? 15-59-05. If the school district opts to provide special education to children who are gifted, cooperates with the director of special education in its administration, and follows the standards adopted by the director of special education for its provision, the director of special education may reimburse the district under N.D.C.C. ? 15-59-06 for its costs within the limits of funds appropriated.

School districts have the authority to provide programs for children who are gifted pursuant to the districts' general authority contained in N.D.C.C. ? 15-29-08 or pursuant to the more specific authority in N.D.C.C. ? 15-59-04. However, it is my opinion that school districts who choose to provide special education programs for children who are gifted pursuant to N.D.C.C. ? 15-59-04 and desire to obtain state financial aid for the programs are required to cooperate with the Superintendent of Public Instruction and the director of special education and conduct the programs in accordance with those standards established by the director of special education under N.D.C.C. ?? 15-59-04 and 15-59-05.

Sincerely,

Dr. Wayne G. Sanstead
April 15, 1994
Page 4

Heidi Heitkamp
ATTORNEY GENERAL

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